IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL NO. 107 OF 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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VANRAJ CHEMICAL INDUSTRIES - Appellant(s)
Versus
NILAM BHARDWAJ DAVE & ANR. - Respondent(s)

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Appearance :
MR. YOGESH S. LAKHANI for Appellant(s).
MR. J.R. NANAVATI for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 28/11/2006

ORAL JUDGMENT

1. This is an appeal by unsuccessful defendants, who have lost in both the Courts. The appeal has been admitted for hearing on the following substantial questions of law:

"(A) Whether the learned Judges below can come to a specific conclusion as to the probable nuisance without ascertaining the real nature of nuisance and therefore, whether the decisions given by both the Courts below cannot be said to be premature in the conspectus of the facts and circumstances of the case?

(B) Whether the suit can be said to be maintainable without joining the Panchayat as a party to the suit?"

2. The short facts necessary for disposal of the appeal are that the respondents-plaintiffs filed a civil suit seeking permanent prohibitory injunction against the present appellants-defendants that they be restrained from establishing/installing lime kiln and not to collect lime stone chips, charcoal powder, charcoal and other things on the land in dispute either personally or through their partners, contractors, labour, servants and others.

The defendants appeared before the Court and contested the suit.

2.1 The trial Court held that the plaintiffs would be suffering probable nuisance. It also recorded a

finding that the defendants were to establish a lime kiln in the residential locality. It granted a decree in favour of the plaintiffs.

As the appeal has been dismissed, the defendants are before this Court.

3. With the change in time, the Government and the Courts have become more jealous against the people, who are involved in creating nuisance or pollution. To achieve the objects of anti pollution, the Central Government has enacted the Prevention of Air Pollution Act, the Prevention of Water Pollution Act and directions have also been issued to control the noise pollution. In a case where the activity of an entrepreneur/industrialist is likely to create air/water pollution, then, such person now would be required to obtain permission/clearance from the Pollution Control Board. In absence of such a permission, the entrepreneur/industrialist cannot establish a brick/lime kiln, it only could be established after obtaining clearance certificate from the Pollution Control Board. Be that as it may.

4. The first substantial question of law, in my

opinion, would not arise in the present case because one cannot be asked to come to the Court after nuisance is already created. If a brick kiln is already established and production starts and thereafter, the plaintiff comes to the Court seeking injunction, then, the defendant would always be ready with the defence that he had spent a good fortune on establishing the industry. If there is likelihood of nuisance or pollution or threat to the health or comfortable living of a citizen of the country, he can certainly come to the Court because the Supreme Court has now observed that right of living does not only mean right to survive, but, it includes right to live with respect and in good conditions and one of the good conditions would be to live in an unpolluted atmosphere. In the present case, when the plaintiffs say that the defendants are likely to establish or install a brick kiln, then, it was for the defendants to say that they shall not do so or if they were not to deny the fact, then, burden was upon them to show that their act would not create any nuisance.

5. So far as the second question is concerned, in the opinion of this Court, the Panchayat was not required to be joined because the plaintiffs were not seeking any relief against the Panchayat.

6. I find no reason to interfere. The appeal deserves to and is, accordingly, dismissed. No costs. Let a decree be framed accordingly.

[R.S.Garg, J.]

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